

1 MARGARET HART EDWARDS, Bar No. 65699  
JOSHUA D. KIENITZ, Bar No. 244903  
2 LITTLER MENDELSON  
A Professional Corporation  
3 650 California Street  
20th Floor  
4 San Francisco, CA 94108.2693  
Telephone: 415.433.1940  
5 Facsimile: 415.358.4566

6 Attorneys for Defendant  
GEORGIA-PACIFIC LLC  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

11 Plaintiff,

12 v.

13 GEORGIA-PACIFIC LLC,

14 Defendant.  
15

Case No. C 07 3944 SBA

**DECLARATION OF MARGARET HART  
EDWARDS IN SUPPORT OF  
DEFENDANT'S OPPOSITION TO  
CHARGING PARTY JANET STEGE'S  
MOTION TO INTERVENE**

Date: March 4, 2008

Time: 1:00 p.m.

Courtroom: 3

Judge: The Hon. Sandra B. Armstrong

16  
17 I, Margaret Hart Edwards, hereby declare:

18 1. I am a shareholder with the law firm of Littler Mendelson, a Professional  
19 Corporation, counsel of record for Defendant in the above-captioned matter. I make this declaration  
20 based on my own personal knowledge and, if called as a witness, I could and would testify  
21 competently thereto.

22 2. In response to Defendant's Request for Production of Documents, Set One,  
23 the EEOC produced the following documents, among other documents, on December 18, 2007:

- 24 • Janet Stege's November 24, 2004 charge of discrimination, a true and correct  
25 copy of which is attached hereto as Exhibit A;
- 26 • a two-page note, apparently written by Janet Stege, summarizing events in  
27 early April 2004, a true and correct copy of which is attached hereto as  
28 Exhibit B;

- the right-to-sue notice issued to Stege by the DFEH on December 1, 2004, a true and correct copy of which is attached hereto as Exhibit C;
- Georgia-Pacific's EEOC Position Statement, apparently sent by GP on January 12, 2005 and received by the EEOC on January 13, 2005, a true and correct copy of which is attached hereto as Exhibit D.

3. In response to Defendant's Request for Production of Documents, Set One, the EEOC produced its type-written notes from the following interviews, among other interviews, on December 18, 2007:

- February 14, 2005 interview with Albert Conrad, bates-stamped EEOC 0071;
- February 14, 2005 interview with Ron Orr, bates-stamped EEOC 0072;
- January 25, 2005 interview with Mike Belmessieri, bates-stamped EEOC 0074-0075; and
- March 7, 2005 interview with Joe McGovern, bates-stamped EEOC 0099-0100.


4. The EEOC and Defendant have entered into a stipulation that Georgia-Pacific Corrugated, LLC, as Stege's only employer, is the only proper defendant in this action and have agreed that the EEOC's Complaint may be amended to Georgia-Pacific Corrugated, LLC and dismiss Georgia-Pacific, LLC.

5. Defendant does not have a copy of any letter by which the EEOC informed Stege of the close of conciliation on June 9, 2005, pursuant to 42 U.S.C. § 2000e-5(f)(1). On January 14, 2008, immediately after being served with Stege's Motion to Intervene (January 12 and 13 were weekend days), Defendant served a supplemental Request for Production of Documents on the EEOC, specifically requesting:

All non-privileged documents (except for those already produced by the EEOC in response to Defendant's Request for Production of Documents, Set One) reflecting the EEOC's correspondence with Charging Party Janet Stege, including, but not limited to, correspondence regarding the EEOC's determination, on or around June 9, 2005, that efforts to conciliate with Ms. Stege's employer had been unsuccessful.

1  
2  
3 I declare under penalty of perjury under the laws of the State of California that the  
4 foregoing is true and correct.

5 Executed this 12th day of February, 2008 at San Francisco, California.  
6

7  
8   
9 MARGARET HART EDWARDS  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT A**

EEOC Form 5 (5/01)

<b>CHARGE OF DISCRIMINATION</b> <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented To:      Agency(ies) Charge No(s): <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC <b>370-2005-00421</b>	
<b>California Department Of Fair Employment &amp; Housing</b> and EEOC <small>State or local Agency, if any</small>			
Name (Indicate Mr., Ms., Mrs.) <b>Ms. Janet Stege</b>		Home Phone No. (Incl Area Code) <b>(650) 583-2070</b>	Date of Birth <b>11-09-1957</b>
Street Address <b>321 San Jose Ave. Millbrae, CA 94030</b>		City, State and ZIP Code	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name <b>GEORGIA PACIFIC</b>		No. Employees, Members <b>500 or More</b>	Phone No. (Include Area Code) <b>(510) 483-7580</b>
Street Address <b>2800 Alvarado St., San Leandro, CA 94577</b>		City, State and ZIP Code	
Name		No. Employees, Members	Phone No. (Include Area Code)
Street Address		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es).) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify below.)		DATE(S) DISCRIMINATION TOOK PLACE Earliest      Latest <b>11-24-2004</b> <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): <p><b>I began working for Respondent on April 18, 1988. My last job title was Strapper Operator. On April 20, 1998, I requested, and received, a reasonable accommodation from Respondent. In April of 2004, Respondent moved from the South San Francisco facility to a facility in San Leandro. Joe McGovern, Plant Manager, informed me that I would no longer be reasonably accommodated at the new facility. On August 12, 2004, I became sick and have been out on medical disability since.</b></p> <p><b>Respondent gave me no reason for its discriminatory actions.</b></p> <p><b>I believe that I have been discriminated against on the basis of my disability, in violation of the Americans with Disabilities Act of 1990, as amended.</b></p>			
<b>RECEIVED</b> NOV 24 2004 <b>EEOC-SFDC</b>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT	
11-24-04 <u>Janet K Stege</u> Date      Charging Party Signature		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	

EEOC 0009

EXHIBIT A

# **EXHIBIT B**

WK OF MARCH 22ND

JOE MCGOVERN PLANT MANAGER TALKED TO ME ABOUT GETTING OFF 40 HR WORK WK. HE SAID ANYONE WHO IS PICKED TO GO TO SAN LEANDRO HAS TO BE ABLE TO WORK O.T. I TOLD HIM I COULDN'T AND THEN I SAID I COULD TRY

APRIL 6TH

LAST DAY IN SSF I WAS PICKED TO GO AND THEY GAVE ME THE STRAPPER JOB.  
APRIL 8TH THUR

ORIENTATION - I PICKED SWING SHIFT AND TALKED TO JOE M. AND ARRON ABOUT WORKING 40 HRS A WK. ARRON TOLD ME HE WOULD CHECK HE HIMSELF THOUGHT EVERYTHING WOULD REMAIN THE SAME.

APRIL 9TH FRI

ORIENTATION -

THEY HAD US SCHEDULED FOR MONDAY APRIL 12TH AND I NOTICED I WAS ON 12 HRS (TRAINING) I REMINDED ARRON ABOUT ME WORKING O.T. AND HE SAID HE WOULD CALL ATLANTA. THEN HE CAME BACK AND TOLD ME HIS BOSS SAID I COULD NOT BE ON A 40HR WORK WK. THEY DO NOT HAVE TO ACCOMMODATE FOR HRS. SHE TOLD HIM EVERYTHING CHANGED WHEN THEY MOVED. I ASKED ARRON FOR THE PHONE # TO CONTACT HER AND HE WOULD NOT GIVE IT TO ME. HE SAID I HAD TO GO THROUGH HIM.

EEOC 0051

EXHIBIT B

APRIL 12TH

WHEN I GOT TO SAN LEANDRO JOE M.  
 AND ARRON PULLED ME ASIDE AND AT THAT  
 TIME MY UNION ~~BUT~~ GENERAL REP. WAS THERE  
 SO I TOOK HIM WITH ME. THEY TOLD ME  
 I HAD TO GET A DOCTORS RELEASE OFF 40 HR  
 WORK WK. BY THE END OF THE WORK WK OR  
 I COULDN'T COME BACK TILL I GOT ONE. MY  
 UNION REP. ASKED THEM IF I COULD GET OFF  
 THE 12 HRS I WAS SCHEDULED TO HAVE TIME  
 TO GO TO THE DOCTORS AND HE WAS TOLD NO.  
 JOE SAID THEY WOULD TRY TO MAKE TIME FOR  
 ME TO GO. I SEEN MY <sup>PRIMARY</sup> DOCTOR ON APRIL 15TH  
 I PUSHED TO GET INTO SEE HER I TOLD THEM  
 (OFFICER) IF I DIDNT GET IN THAT WEEK I COULDN'T  
 GO BACK TO WORK. MY DOCTOR RELEASED ME  
 SEE LETTER. IT WAS MY INTERNAL MEDICINE  
 DOCTOR WHO PUT ME ON 40 HRS SEE LETTER  
AUG 12 WORKED 12TH - 15TH W/OUT RELEASE

LEFT WORK AT 5:00 PM. MEDICATIONS  
AUG 13TH - PRIMARY DR. FLEXERIL CELEBREX  
AUG 23RD - PHYSICAL THERAPY VICODIN  
OCT 8TH - INTERNAL MEDICINE TIZANIDINE  
 NORTRIPTYLINE  
 AMBIEN  
 NAPROXEN  
 IBUPROFEN

LEGAL AID 415 864-8848  
 ELIZABETH CHRISTEN

OFFERED ME PERMANENT  
 Disability



# **EXHIBIT C**

STATE OF CALIFORNIA - STATE AND CONSUMER SERVICE AGENCY

ARNOLD SCHWARZENEGGER, Governor

## DEPARTMENT OF FAIR EMPLOYMENT &amp; HOUSING

(SEE ADDRESS CHECKED BELOW)



TTY # (800) 700-2320

EEOC NUMBER : 370-2005-00421

☐ 1001 Tower Way, Suite 250  
Bakersfield, CA 93309  
H (661) 395-2729

CASE NAME : JANET STEGE v.  
GEORGIA PACIFIC

DATE : December 1, 2004

☐ 1320 E. Shaw Avenue, Suite 150  
Fresno, CA 93710  
C (559) 244-4760

## NOTICE TO COMPLAINANT AND RESPONDENT

☐ 611 West Sixth Street, Suite 1500  
Los Angeles, CA 90017  
B (213) 439-6799

This is to advise you that the above-referenced complaint is being referred to the California Department of Fair Employment and Housing (DFEH) by the U.S. Equal Employment Opportunity Commission (EEOC). The complaint will be filed in accordance with California Government Code section 12960. This notice constitutes service pursuant to Government Code section 12962.

☒ 1515 Clay Street, Suite 701  
Oakland, CA 94612  
M (510) 622-2941

No response to the DFEH is required by the respondent.

☐ 2000 "O" Street, Suite 120  
Sacramento, CA 95814  
E (916) 445-5523

The EEOC will be responsible for the processing of this complaint. DFEH will not be conducting an investigation into this matter. EEOC should be contacted directly for any discussion of the charge. DFEH is closing its case on the basis of "processing waived to another agency."

☐ 1350 Front Street, Suite 3005  
San Diego, CA 92101  
D (619) 645-2681

## NOTICE TO COMPLAINANT OF RIGHT-TO-SUE

☐ 121 Spear Street, Suite 430  
San Francisco, CA 94105  
A (415) 904-2303

Since DFEH will not be issuing an accusation, this letter is also your right-to-sue notice. According to Government Code section 12965, subdivision (b), you may bring a civil action under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The lawsuit may be filed in a State of California Superior or Justice Court. Government Code section 12965, subdivision (b), provides that such a civil action must be brought within one year from the date of this notice. Pursuant to Government Code section 12965, subdivision (d)(1), this one-year period will be tolled during the pendency of the EEOC's investigation of your complaint. You should consult an attorney to determine with accuracy the date by which a civil action must be filed. This right to file a civil action may be waived in the event a settlement agreement is signed. Questions about the right to file under federal law should be referred to the EEOC.

☐ 111 North Market Street, Suite 810  
San Jose, CA 95113  
G (408) 277-1277

☐ 2101 East Fourth Street, Suite 255-B  
Santa Ana, CA 92705  
K (714) 558-4266

The DFEH does not retain case records beyond three years after a complaint is filed.

Remember: This Right-To-Sue Notice allows you to file a private lawsuit in State court.

Sincerely,

WANDA J. KIRBY  
Deputy Director  
Enforcement Division

EEOC 0016  
DFEH-200-02 (01/04)

EXHIBIT C

# **EXHIBIT D**

# Georgia-Pacific Corporation

## Position Statement

Stege Charge: 370-2005-00421

EEOC 0082

**EXHIBIT D**



Amy M. McDonald  
419 Promontory Drive East  
Newport Beach, CA 92660  
(949) 706-7245

January 12, 2005

**RECEIVED**  
JAN 13 2005  
EEOC-SFDO

Terry G. Knapp  
Office Automation Asst.  
San Francisco District Office  
350 The Embarcadero Suite 500  
San Francisco, CA 94105

Re: Janet Stege  
Charge 370-2005-00421

Dear Mr. Knapp:

This document is submitted on behalf of Georgia-Pacific Corporation in response to the above-referenced charge. The information herein contained includes a statement of the company's position with respect to the allegations identified in this charge and relevant supporting documentation.

The Charging Party alleges that she has been discriminated against in violation of the Americans with Disabilities Act of 1990 (ADA). Georgia-Pacific is an Equal Opportunity Employer (Exhibit 1) and denies the allegation of discrimination. The following information supports that position and accordingly, this charge should be dismissed in its' entirety.

#### **BACKGROUND INFORMATION**

Georgia-Pacific Corporation is a manufacturer and distributor of building products, packaging and paper. The San Leandro, CA plant is a part of Georgia-Pacific's Packaging Division and is responsible for producing a wide range of products for consumer use. The San Leandro plant operates 24 hours a day and 5-7 days a week based on the season.

The Charging Party was employed at Georgia-Pacific Corporation's South San Francisco, CA plant on April 18, 1988. She is currently employed at our San Leandro, CA facility as a Strapper Operator. While working at our South San Francisco, CA plant the charging party requested and received a reasonable accommodation for a 40-hour a week work restriction when she was awarded the position of janitor. In April of 2004, the company moved their business to a larger, more profitable location in San Leandro. This resulted in business changes including new machines, new customers, new employees, and different jobs. The company made a decision to no longer have the janitorial position as a full-time job. This was a decision that was made at all union plants on the West Coast.

EEOC 0083

### Particulars

**Allegation:** I began working for Respondent on April 18, 1988. My last job was Strapper Operator. On April 20, 1998, I requested, and received, a reasonable accommodation from Respondent. In April 2004, Respondent moved from South San Francisco to a facility in San Leandro. Joe McGovern, Plant Manager, informed me that I would no longer be reasonably accommodated at the new facility. On August 12, 2004, I became sick and have been out on medical leave disability since. Respondent gave me no reason for its discriminatory actions. I believe that I have been discriminated against on the basis of my disability, in violation of the Americans with Disabilities Act of 1990, as amended.

**Company Response:** On April 20, 1998, the Charging Party bid and received the janitorial position at the South San Francisco facility. While working in this position, the Charging Party requested a reasonable accommodation to work a restricted schedule of only 40 hours per week. After reviewing the request, the company determined that the duties of the janitorial position could be accomplished within a 40-hour week and accordingly, the company granted the Charging Party's request. The Charging Party remained in that position until the plant was closed on April 7 of 2004. When the company relocated to the new San Leandro facility, the janitorial position that the Charging Party held was no longer available. On April 7, 2004 the Charging Party was offered the position of strapper operator at the new facility. All employees from the South San Francisco facility who were offered positions at the new facility had the opportunity to either accept the position or decline it and take a severance package. If employees were not sure at the time of the offer, they were allowed a 30-day trial period at the new facility beginning on April 8, 2004. If within 72 hours of moving to the new facility, the employee felt that their new position or the new location was not suitable for them they could take the severance package, provided that they worked for 30-days to allow the company time to find a replacement. The company also gave all employees an additional 30 days starting from April 12, 2004 to provide a justifiable reason to leave and they would still receive severance. Upon offering the Charging Party the strapper operator position, she was informed that the ability to work overtime in the position was an essential function of the job. Per section 8 of the labor agreement (Exhibit 2), if a shift worker does not report for his regular shift, his mate shall notify the foreman. He shall remain at his post until a substitute is secured and if necessary, he shall work an extra shift at the overtime rate. The Charging Party's position is a shift position that requires over-time. All positions in the plant are covered under the same collective bargaining agreement. The Charging Party was also advised that the company would need medical certification from her physician to indicate that she was able to work an unrestricted work schedule. On April 15, 2004 the Charging Party's doctor released her from the overtime restrictions and the Charging Party did not request any other accommodations for the company to consider. Accordingly, the company no longer viewed the Charging Party as needing any reasonable accommodation. The Charging Party began working overtime in the strapper operator position and in June 2004, she approached Aaron Ybarrondo, Human Resources Manager, and expressed concerns regarding her ability to continue in her position. Mr. Ybarrondo provided the Charging Party with medical certification paperwork and requested that she have it completed by her physician so that the company could determine her ability to safely perform her job and/or whether she should be granted leave under FMLA based on the physician's evaluation. The Charging Party never returned the medical certification paperwork and continued to work in the position of strapper operator until August 12, 2004. On August 13, 2004, Charging Party called into work and indicated that she would be out on medical leave. The Charging Party has not returned to work since then and remains on medical leave. Further, she has not presented any medical documentation that indicates she can return to work with or without a reasonable accommodation. Therefore, the Charging Party's assertion that she has been discriminated against based on her alleged disability is without merit.

### RESPONDENT'S POSITION

It is the position of Georgia-Pacific Corporation that the Charging Party has not been discriminated against based on disability or any other classifications protected by local, state or federal laws. All decisions and actions regarding Charging Party have been based on legitimate nondiscriminatory business needs. For the reasons stated herein, Georgia-Pacific respectfully requests that the Commission issue a no cause determination and dismiss this charge in its' entirety.

Sincerely,



Amy M. McDonald  
Sr. Manager Human Resources